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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/303,464	04/30/1999	STEVEN J. SISTARE	P3949	8397
7590	12/01/2003		EXAMINER	
B. NOEL KIVLIN CONLEY, ROSE & TAYON, P.C. P.O. BOX 398 AUSTIN, TX 78767			HO, THE T	
			ART UNIT	PAPER NUMBER
			2126	13

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/303,464	SISTARE ET AL.	
	Examiner The Thanh Ho	Art Unit 2126	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>08 September 2003</u> .			
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .                    2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-15</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1-15</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
15) <input checked="" type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.			
<b>Attachment(s)</b>			
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .		6) <input type="checkbox"/> Other: _____ .	

#### **DETAILED ACTION**

1. This action is in response to the request for reconsideration filed 9/8/2003.
2. Claims 1-15 have been examined and are pending in the application.

#### ***Claim Rejections - 35 USC § 112***

3. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "cp" in line 1.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 6-7, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by May U.S Patent No. 4,783,734.

As to claim 1, May teaches a process (inputting process, column 39 lines 29-41) and a spin daemon (processor to schedule, column 39 lines 24-41 and column 34 lines 3-68), the process is waiting for a flag (PRIFLAG 47, column 34 lines 45-52) to change condition (the process carry out a test condition, column 34 lines 55-67, and PRO Run, column 19 lines 47-52) transmit a flag monitor request (added to a list or queue of

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processes, column 31 lines 52-56) to the spin daemon and de-schedule itself (descheduled, column 31 lines 41-62), and after the flag changes condition (column 34 lines 41-68), enable the process to be reschedule (reschedule, column 34 lines 67-68) for execution by the computer.

As to claim 2, May teaches spin daemon is configured to monitor a plurality of flags (Priority 1 Process Work Spaces P, Q, R, and S, Fig. 4), each process having two flags to change the priority from low to high (PRIFLAG changes condition, column 34 lines 47-68), a list of identifying flags (a list of low priority processes, Fig. 4 and Brief Description of the Drawings, column 3 lines 17-19) while a high priority process is being executed (Fig. 4 and column 7 lines 45-54).

As to claims 6-7, note the discussions of claims 1-2 above, respectively.

As to claims 11-12, note the discussions of claims 1-2 above, respectively.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-4, 8-9 and 13-14 are rejected under 35 US C. 103(a) as being unpatentable over May in view of Conger (Windows API Bible, 1992 publication).

As to claim 3, May does not explicitly teach flags contained in a memory segment. Conger teaches memory segment ("segment", page 612 line 10 and the uses of memory segment on pages 612-614). It would have been obvious to apply the teachings of Conger to the system of May because this provides the flags of May are contained in a memory segment, therefore the memory holding the flags can be deallocated when that process is finished. As the result, the system of May will work more efficiently.

As to claim 4, the spin daemon of May is not being configured to provide a handle or use of memory segment. The memory segment of May as modified by Conger provides an identifier for the memory segment (a far address or NEAR addresses, page 612 lines 17-30). Note the discussion of claim 3 for motivation to include the teaching of a memory segment. As to the handle, Conger also teaches the use of a handle (HWND hWnd, pages 9 lines 39-56 and page 10 lines 1-17). When a process makes a request, it would have been obvious to provide a handle in May's process (a spin daemon) so that the handle can be used to perform the flag monitor request by any other processes of May's system, and the handles in Conger can trace different types of system resources (Conger, page 9 lines 20-23).

As to claims 8-9, note the discussions of claims 3-4 above, respectively.

As to claims 13-14, note the discussions of claims 3-4 above, respectively.

6. Claims 5, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over May in view of Arthur Dumas (Programming WinSock, 1995 publication).

As to claim 5, May does not explicitly teach the spin daemon is configured to communicate over a socket. Arthur teaches WinSock (WINSOCK32.DLL, Fig. 3.1 page 45) as a communication mechanism between processes. It would have been obvious to apply the teachings of Arthur to the system of May because this provides a feature in form of upgradeable DLL library for future improvement.

As to claims 10 and 15, note the discussion of claim 5 above.

### ***Response to Arguments***

7. Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant argued that May does not teach "the process...de-schedule itself" (Remarks, fifth paragraph page 2). In response, May teaches a system in which the process is waiting for a flag (PRIFLAG 47, column 34 line 45) to change condition (the process carry out a test condition, column 34 lines 55-67, and PRO Run, column 19 lines 47-52) transmit a flag monitor request (added to a list or queue of processes, column 31 lines 52-56) to the spin daemon and de-schedule itself (descheduled, column 31 lines 41-62). The reference meets the limitation as claimed.

Applicant argued that May does not teach a spin daemon (Remarks, last paragraph page 2). In response, May teaches a processor (column 34 lines 3-68) that is responsible for rescheduling the execution of a process based on the condition of a flag. This process had been previously descheduled (dequeue, column 34 line 6; process descheduled, column 33 line 62) before being rescheduled again. The

processor disclosed in May reference performed each and every function of the spin daemon of the applicant's claim invention. The reference meets the limitation as claimed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to The Thanh Ho whose telephone number is 703-306-5540. A voice mail service is also available for this number. The examiner can normally be reached on Monday – Friday, 8:30 am – 5:00 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Any response to this action should be mailed to:

Commissioner for Patents  
P.O Box 1450  
Alexandria, VA 22313-1450

Or fax to:

- AFTER-FINAL faxes must be signed and sent to (703) 746 – 7238
- OFFICIAL faxes must be signed and sent to (703) 746 – 7239
- NON OFFICIAL faxes should not be signed, please send to (703) 746 – 7240



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TTH  
November 26, 2003